APPEAL NO. 93421

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On March 31, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issue of whether, and when, the claimant, JG, who injured his ankle on date of injury, had reached maximum medical improvement (MMI). An earlier issue, the extent of impairment, was resolved when the parties announced that a 10% impairment rating would not be disputed.

The hearing officer determined that the claimant had reached MMI on July 15, 1992, a date found by both the designated doctor and the carrier's doctor.

The claimant has appealed this decision, arguing that the designated doctor had not properly complied with the rules of the Texas Worker's Compensation Commission (Commission) in completing his original report, and his assessment of MMI should therefore be rejected. The carrier responds that the designated doctor told the Commission over the telephone, and by an amended TWCC-69 report, what the date of MMI was in his opinion.

DECISION

The decision of the hearing officer is affirmed.

Claimant injured his left ankle when a piece of heavy equipment rolled over it. He worked for Mundy Contract Maintenance (employer), and continued to work until June 1991. He first saw (Dr. H), of , Mexico on June 3, 1991, and was diagnosed with a severe contusion of the ankle.

Letters from Dr. H are dated from June 11, 1991, through October 13, 1992. Dr. H continued to keep claimant off work during this time, at the same time describing his condition in terms along the lines of "no change in symptoms," "no improvement," or "remain the same." On June 10, 1992, even though MMI is not mentioned, Dr. H stated that claimant had a 25% permanent impairment of his left lower extremity which constituted a 10% whole body "disability."

A doctor for the carrier, (Dr. G), certified MMI effective July 15, 1992, with a 10% whole body impairment.

Claimant testified that he had physical therapy in 1991, none in 1992, and resumed physical therapy in 1993. He said therapy had improved his flexibility. He stated that he had not worked since June 1991, and that his ankle still hurts, sometimes more, sometimes less. The records show that claimant consulted with (Dr. T), of the University of Texas Health Science Center at San Antonio pain clinic, on February 4, 1992; on January 6, 1993, he also saw her. Dr. T, in the first letter, noted a "possible RSD" [reflex sympathetic dystrophy]. In her January 6, 1993, letter Dr. T noted that claimant had normal range of

motion in his ankle, but he denied that this was true. Dr. G indicated that his review of Dr. T's report confirmed the RSD he had suspected, but did not alter his opinion as to MMI and impairment.

The designated doctor, (Dr. S), reported on October 31, 1992, that claimant had reached MMI with a zero percent impairment. The parties stipulated that Dr. S had all of claimant's medical records when he made his assessment. Dr. S completed a TWCC-69 and a four page narrative, but did not put down the date of MMI, although he indicated that it had been reached. Notes from the Commission's computer log indicate that Dr. S was contacted on November 10, 1992, by Commission personnel and asked to supply an MMI date, and indicated at that time that he agreed with the July 15, 1992, date. He did not file an updated TWCC-69 until January 1993.

The Appeals Panel has repeatedly pointed out that pain does not necessarily mean that MMI has not been reached, as it is defined in Article 8308-1.03(32)(A). Texas Workers' Compensation Commission Appeal No. 92270, decided August 6, 1992. It is possible to see, from reviewing Dr. H's reports alone, that claimant essentially stabilized and failed to make further improvement by the time of the designated doctor's examination, consistent with the definition of MMI in issue here.

We have also noted that failure to comply with the seven day deadline for filing a report certifying MMI, at set out in TEXAS W.C. Comm'n Rules, 28 TEX. ADMIN. CODE § 130.1 (Rule 130.1), does not undermine the substance of the report. Texas Workers' Compensation Commission Appeal No. 92132, decided May 18, 1992. Such a deadline is directory, not mandatory, and the sanction for failure to comply is an administrative penalty, not disqualification of the report itself. Further, we have stated that Commission personnel should contact a designated doctor, who serves as its own appointed expert, if his report contains omissions or if further questions remain. *See* Texas Workers' Compensation Commission Appeal No. 92570, decided December 14, 1992. This is exactly what was done in this case. The report of a designated doctor does not consist merely of a single TWCC-69 form but may include narratives attached to that report or subsequent reports. Texas Workers' Compensation Commission Appeal No. 93077, decided March 15, 1993.

Even if the report of the designated doctor that MMI had been reached was overcome by the great weight of other medical evidence, it is clear that at least one other doctor, Dr. G, certified MMI on July 15, 1992. Moreover, Dr. H's assessment of an impairment rating on June 10, 1992 indicates that MMI was reached even earlier than the date found by the hearing officer, because "permanent" impairment should not be assessed prior to the achievement of MMI. *See* Art. 8308-1.03(24); 8308-4.26(d).

Only the great weight of <u>medical</u> evidence can reverse the presumptive status of the designated doctor's report. As the Appeals Panel has stated before, this requires more

than a mere balancing of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Claimant's lay testimony does not refute the designated doctor's assessment of MMI, and much of the other medical evidence supports, rather than contradicts, the achievement of MMI.

The hearing officer's decision in this case is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge